Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules	)	WT Docket No. 96-6
to Permit Flexible Service Offerings	)	
in the Commercial Mobile Radio Services	)	

U S WEST COMMENTS

U S WEST, Inc., on behalf of its telecommunications subsidiaries, submits these comments in response to the Notice of Proposed Rulemaking, FCC 96-17 (Jan. 25, 1996). U S WEST supports the proposals set forth in the Notice, and it commends the Commission for introducing these market-driven, consumer-oriented, pro-competitive proposals.

I. CMRS Providers Should Be Permitted to Provide Any Service — Including Any Fixed Service

U S WEST endorses the Commission's proposal to give all broadband CMRS providers the flexibility to offer fixed wireless local loop services, and it encourages the Commission to extend this proposal to include all other fixed services, as well. Removal of all use restrictions will give broadband CMRS licensees greater flexibility to use their spectrum most efficiently and much greater flexibility to meet ever-changing market demand for new services and features.[1]

[1] In this regard, Section 7(a) of the Communications Act provides that "[i]t shall be the policy of the United States to encourage the provision of new technologies and services to the public." 47 U.S.C. § 157(a).

As the Commission notes, its current rules are unclear regarding the extent to which broadband CMRS providers may offer fixed services.[2] These fixed-use restrictions were imposed to ensure adequate spectrum was available for mobile services.[3] While this concern may have been warranted in the past, recent developments have rendered the fixed-use restrictions unnecessary and counterproductive.

The first development of note is that in recent years the Commission has more than quadrupled the amount of spectrum available for CMRS services. In 1975, the Commission allocated 40 MHz of spectrum for cellular mobile services,[4] and in 1986 it allocated an additional 10 MHz — for a total of 50 MHz.[5] Five years ago, the Commission permitted SMR licensees to consolidate their spectrum (up to 19 MHz) to provide broadband services in competition with cellular carriers.[6] Almost two years ago, the Commission allocated another 120 MHz of spectrum for licensed PCS,[7] and last year it

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[2] *See* Notice at 3 ¶ 1 and 5 ¶ 5. The fixed-use restrictions are also somewhat different for different categories of broadband CMRS providers (*see* id. at 4-5 ¶ 4), undermining the regulatory parity objective of the Omnibus Budget Reconciliation Act of 1993.

[3] *See* Notice at 5 ¶ 5 and 9 ¶ 12.

[4] *See* Future Use of the Frequency Band 806-960 MHz, 51 F.C.C.2d 945 (1975).

[5] *See* Amendment of Parts 2 and 22 Relative to Cellular Communications Systems, 2 FCC Rcd 1825 (1986).

[6] *See* Fleet Call, 6 FCC Rcd 1533 (1991), *recon. dismissed*, 6 FCC Rcd 6989 (1991). The FCC recently changed its rules to allow 900 MHz SMRs to be licensed on an MTA basis, and it is also considering changing the 800 MHz SMR licensing rules to further facilitate the consolidation of small SMRs into wide-area SMRs. *See* Amendment of Parts 2 and 90, 10 FCC Rcd 6884 (April 17, 1995)(Second Report); and Amendment of Part 90, 10 FCC Rcd 7970 (Nov. 22, 1994)(Further Notice of Proposed Rulemaking).

[7] *See* PCS Memorandum Opinion & Order, 9 FCC Rcd 4957, 4963 ¶ 17, 4970-71 ¶¶ 26-27 (1994).

allocated another 25 MHz of spectrum which can also be used for mobile services.[8] By these actions, the Commission has now made available a total of 219 MHz of licensed spectrum for broadband CMRS— with another 30 MHz of unlicensed spectrum available for use by consumers.[9]

Another significant development is the emergence of digital air interfaces. Many cellular carriers still use the analog interface (AMPS) developed over 30 years ago. Newly available digital air interfaces facilitate a much more efficient use of the spectrum and will allow carriers to increase substantially the capacity of their systems. For example, it has been reported that code division multiple access (CDMA) offers the potential of more than ten times the capacity of an AMPS system when comparing equivalent bandwidths for a mobile application and offers significantly higher efficiencies when applied against a fixed wireless loop application.[10] Even more efficiencies should be realized in fixed wireless applications because of :

- the impact on channel fading due to a zero mobility condition;
- lower interference levels due to directional fixed subscriber antennas; and

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[8] *See* Government Reallocation Second Report, ET Docket No. 94-32, 78 Rad. Reg. 2d (P&F) (July 31, 1995)(establishing the General Wireless Communications Service).

[9] *See* PCS Memorandum Opinion and Order, 9 FCC Rcd 4957, 4963 ¶ 17, 4970-71 ¶¶26-27 (1994), and Government Re-Allocation First Report, 10 FCC Rcd 4769, 4770 at ¶ 1, 4773 at ¶ 6, and 4779-81 at ¶¶ 16-19 (Feb. 17, 1995). Additional spectrum will likely become available in the future, whether from the government reallocation plan, current UHF/VHF stations, or other developments.

[10] *See* Network Computing, February 15, 1996; Inside Telecom, July 17, 1995; Cellular Marketing, March, 1995.

- the lack of soft hand-off requirements.

In addition, there is the potential over time to increase the channel efficiency through future technology improvements, primarily in base station antenna improvements and voice coding enhancements.

Removal of the fixed-use restrictions would be appropriate even without these developments. Regardless of capacity concerns, the question remains: who — regulators or carriers serving consumers — is in the best position to decide which set of services should be made available to consumers using whatever spectrum is available?

If given the flexibility, broadband CMRS licensees would provide the mix of services that best meet market demand — because those services would be the most profitable. Today, that market demand is in mobile services. If there is a demand for fixed services, broadband CMRS licensees will meet that demand if fixed services can be offered more profitably than mobile services. More likely, they will meet that demand by using excess capacity (because of the developments noted above).[11] In either event, the

[11] As the Commission notes, ". . . the characterization of permissible use in our rules may be inhibiting carriers intending to use radio links to replace existing wireline service or to bring service to rural or less attractive areas. . ." Notice at 5-6 ¶ 5. The proposed rule changes should remove one important regulatory barrier to improved service delivery in remote rural areas, where CMRS providers are likely to have excess capacity.

U S WEST has previously demonstrated to the Commission the practical and economical advantages of utilizing fixed wireless loop in remote areas which might otherwise be deprived of service. *See* Comments of U S WEST Communications, Inc., CC Docket No. 95-115, filed November 20, 1995 (citing projected 1996 demand for 12,654 lines in remote or rural areas of U S WEST Communications' territory which could be economically served only via wireless solutions). *See also* File No. 4511-EX-PL-94 (U S WEST experimental license KE2XEX, under which it successfully tested fixed wireless loop technology in the provision of basic telephone service to locations in which wireline facilities are either cost prohibitive to install or require unacceptably long deployment timetables because of low population density, challenging

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current market demand for services will be satisfied and, more importantly, CMRS providers would retain the flexibility to change their mix of fixed and mobile services as market demand changes over time. U S WEST submits that an environment in which market demand is determined by business decisions rather than by a regulator's perception of the demand is the best approach — especially for the consuming public.

One potential anomaly in the Notice is that if the rule changes proposed are adopted, they would have a disparate effect among CMRS providers. Specifically, if the rule changes are made, then all cellular licensees except the Bell companies would be able to use their cellular spectrum to provide fixed wireless local loop services. The Bell companies, in contrast, would be denied this opportunity as long as the separate subsidiary restrictions set forth in Rule 22.903 are maintained. This disparate regulatory scheme has already required U S WEST to seek a narrow waiver of Rule 22.903 to resell cellular service for "held order" customers.[12]

Congress recently provided some relief from the Rule 22.903 restriction in permitting Bell companies to "jointly market and sell" cellular service.[13] A federal appellate court has also instructed this Commission to "promptly conduct an inquiry into whether the [cellular] structural separation requirement continues to serve as a necessary regula-

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topology, or both).

[12] *See* U S WEST Communications Request for a Limited Waiver of Section 22.903 of the Commission's Rules, filed January 23, 1996.

[13] *See* Section 601(d) of the Telecommunications Act of 1996, Public Law No. 104-104, 100 Stat. 56.

tory restriction on . . . Bell Operating Companies."[14] The Commission has indicated that it expects to commence a rulemaking regarding this issue in March.[15] U S WEST urges the Commission to address this issue expeditiously and eliminate the last vestige of disparate regulation among competing CMRS providers.

While the Bell companies do not face the same obstacle with PCS spectrum,[16] they do face a different problem. Due to unforeseen delays in the auctioning of this spectrum, it may be some time before the PCS D, E, and F spectrum blocks are auctioned, licensed, and available for use by additional competitive entrants, including Bell companies. Particularly in light of the Commission goals outlined in the Notice, U S WEST urges the Commission to take steps necessary to expedite the PCS D, E, and F block auctions as quickly as possible.

II. CMRS Providers Providing a Fixed Service Should Be Regulated as CMRS Providers

The Notice makes clear that fixed services offered by CMRS providers will be

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[14] Cincinnati Bell Telephone Co. v. FCC, 69 F.3d 752, 767-68 (6th Cir. 1995).

[15] *See* FCC Public Notice dated February 12, 1996 (Wireless Telecommunications Bureau Telecommunications Act of 1996 Implementation Work Plan).

[16] Although the Commission's decision to permit the Bell companies to provide PCS without structural separation was never challenged on appeal, certain CMRS providers have recently asked the Commission to reconsider this matter again. *See* Letter from Warner Hartenberger, Dow, Lohnes & Albertson, on behalf of AirTouch Communications, Comcast Corporation, and Cox Enterprises, to William Kennard, FCC General Counsel (Jan. 18, 1996); Letter from Brian Kidney, AirTouch Communications, Joseph Wax, Jr., Comcast Corporation, and Alexander Netchvolodoff, Cox Enterprises, Inc., to the Hon. Reed Hundt, FCC Chairman (Jan. 18, 1996). U S WEST has demonstrated that this request lacks merit and represents an effort by these CMRS providers to insulate themselves from additional, vigorous competition to the detriment of American consumers. *See* Letter from Daniel Poole, U S WEST, to William Kennard, FCC General Counsel (Feb. 5, 1996).

regulated as CMRS even though the services may compete with landline local exchange services, which will continue to be regulated as before.[17] In these particular circumstances, U S WEST does not quarrel with this uneven (landline vs. wireless) regulatory proposal. U S WEST agrees with Commissioner Chong that "ultimately, communications services provided in direct competition with one another should be subject to the same level of regulation" but that at times "we have to take some regulatory detours to get us to our destination."[18]

Consistent with the regulatory parity objective of the Omnibus Budget Reconciliation Act of 1993, U S WEST assumes that the Commission will treat all CMRS providers the same — including landline LECs which also provide some CMRS service. It is one thing to permit, for a temporary period of time, disparate regulation between landline and wireless service providers; it is another thing altogether to permit disparate regulation among competing wireless providers. The Commission is well aware of the problems caused when regulations treat different CMRS providers differently (*e.g.*, the cellular structural separation rule). Now is not a time to inject yet additional disparities.

Landline LECs (incumbents or new) should be regulated as CMRS providers to the extent they provide fixed wireless local loop service. To do otherwise would enable

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[17] *See* Notice at 11-13 ¶¶ 19-20.

[18] Separate Statement of Commissioner Chong at 1.

the states to regulate the rates and entry of services that have been designated as CMRS — a result prohibited by the Omnibus Reconciliation Budget Act of 1993. Consequently, all CMRS providers should be regulated as CMRS providers to the extent they provide CMRS services — which may include the provision of fixed services.

III. CMRS Universal Service Obligations Should be Addressed as Part of the Comprehensive Universal Service Proceeding the Commission Will be Commencing

The Commission seeks comment on whether CMRS providers, to the extent they offer fixed wireless local loop services, should be subject to universal service obligations.[19] U S WEST has long believed that the type of technology a carrier happens to use should have little or no relevance in determining whether the carrier should either contribute its appropriate share to universal service support programs or be eligible to receive program funding under the proper circumstances.[20]

These questions are now academic, however, because Congress, in the Telecommunications Act of 1996, has specifically mandated that "all providers of telecommunications services should make an equitable and non-discriminatory contribution to the preservation and advancement of universal service."[21] Given the broad definition of "telecommunications service" in the 1996 Act,[22] Congress clearly intended that all

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[19] *See* Notice at 13-14 ¶ 21.

[20] *See, e.g.,* U S WEST Comments, Docket 80-286 (Oct. 28, 1994).

[21] *See* Section 101(a) of the 1996 Act, adding Section 254(b)(4). This obligation applies to both interstate and intrastate universal service fund programs. *See* Sections 254(d) and (f).

[22] Section 3(a)(51) of the 1996 Act provides that "the term 'telecommunications service' means the offer-

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classes of carriers, not simply those engaged in landline and/or local exchange services, should be required to contribute to universal service programs.

The Commission also proposes to defer these CMRS universal service issues to other proceedings examining the subject of universal service.[23] The 1996 Act appears to resolve this issue as well. Specifically, Section 254(a)(2) requires the Commission to "initiate a single proceeding" to implement universal service recommendations of a Federal-State Joint Board. This directive appears to require that all matters related to universal service, including that portion of the instant docket addressing this subject, be folded into one comprehensive proceeding.

Considering the CMRS universal service issues in the general universal service rulemaking also makes good sense. Universal service is complex, and both the Federal-State Joint Board and this Commission need to consider all aspects of the subject, including CMRS provision of fixed services, in developing a new plan.

In contrast, many companies are now planning their new networks (or are considering expanding their existing networks), and their service and network planners need to know immediately the types of services they can provide over their new or expanded networks. These considerations also suggest that the Commission separate the CMRS

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ing of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." *See* 47 U.S.C. § 153(51).

[23] *See* Notice at 14 ¶ 21.

universal service issues from this proceeding and enter a decision on the remaining issues as soon as possible.

IV. Conclusion

For the foregoing reasons, U S WEST recommends that the Commission: (1) amend its rules to permit any broadband CMRS licensee to provide any service, fixed or mobile; (2) apply CMRS regulation to all CMRS providers insofar as they are engaged in providing CMRS service; and (3) consider CMRS universal service issues as part of the comprehensive universal service rulemaking the Commission will commence shortly. Finally, the Commission should render its decision in this rulemaking soon so service and network planners can design their networks to meet the full demands of the consuming public.

Respectfully submitted,

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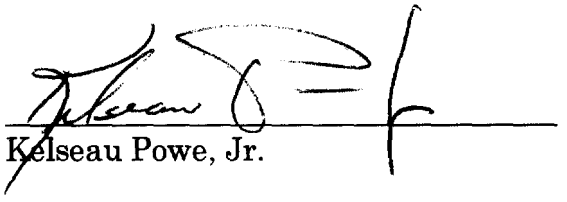
February 26, 1996

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 26th day of February, 1996, I have caused a copy of the foregoing **U S WEST COMMENTS** to be served via hand-delivery upon the persons listed on the attached service list.



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